159 U.S. 663

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 616.

GEORGE GOODE, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 13, 1895.

(15,903.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 31, 1895.

a UNITED STATES OF AMERICA, *ss:*

Seal of the District Court, Massachusetts.

The President of the United States to the honorable the judge of the district court of the United States for the district of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, in a cause entitled United States, by indictment, against George Goode, defendant, numbered 1497, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the thirty-first day of May, A. D. 1895, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the first day of May, in the year of our Lord one thousand eight hundred and ninety-five.

FRANK H. MASON,
Clerk of the District Court of the United States,
District of Massachusetts.

Allowed by—
THOS. L. NELSON,
U. S. D. J.

b District Court of the United States.

DISTRICT OF MASSACHUSETTS, *ss:*

And now here the judge of the district court of the United States in and for the district of Massachusetts makes return of this writ by annexing hereto and sending herewith, under the seal of the said district court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

Seal of the District Court, Massachusetts.

In testimony whereof I, Frank H. Mason, clerk of said district court of the United States in and for the district of Massachusetts, have hereto set my hand and seal of said court this tenth day of May, A. D. 1895.

FRANK H. MASON, *Clerk.*

c District Court of the United States, District of Massachusetts.

UNITED STATES, by Indictment,
v.
GEORGE GOODE.

Transcript of Record.

1 UNITED STATES OF AMERICA,
Massachusetts District, } *ss:*

At a district court of the United States begun and holden at Boston, within and for the district of Massachusetts, on the third Tuesday (being the nineteenth day) of March, in the year of our Lord one thousand eight hundred and ninety-five, before the Honorable Thomas L. Nelson, judge.

UNITED STATES, by Indictment,
v.
GEORGE GOODE.

The jurors for the United States of America within and for the district of Massachusetts upon their oath present that George Goode, of Boston, on the first day of March, in the year of our Lord one thousand eight hundred and ninety-five, at said Boston, within said district of Massachusetts, then and there being a person employed in a certain department of the postal service of the United States of America, to wit, letter-carrier, employed in the letter-carrier department of the branch post office of the United States of America at said Boston, commonly called the Roxbury station of the Boston post office at said Boston, did then and there, by virtue of his said employment, have intrusted to him, receive, and take into his possession and under his care a certain letter deposited in said branch post office and in the mail of said United States, intended to be conveyed by mail, which letter then and there contained
2 two pecuniary obligations of the Government of *of* the United States of America, commonly called silver certificates, each for the amount and each of the value of one dollar; five United States postage stamps, each of the denomination and each of the value of two cents; and which said letter upon the outside envelope thereof was then and there addressed and directed as follows:

"JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.*,"

a more particular description of said letter, the address and direction thereof, being to said jurors unknown.

And said jurors on their oath aforesaid do say that the said Goode, such person then and there employed as aforesaid, the said letter containing said silver certificates and said postage stamps so by him had, received, and possessed did then and there unlawfully and feloniously secrete, embezzle, and destroy—

Against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the United States of America within and for the district of Massachusetts upon their oath aforesaid do further present that George Goode, of Boston, on the first day of March, in the year of our Lord one thousand eight hundred and ninety-five, at said Boston, within said district of Massachusetts, then and there being a person employed in a certain department of the postal service of the United States of America, to wit, letter-carrier, employed in the letter-carrier department of the branch post office of the United States of America at said Boston, commonly called the Roxbury station of the Boston post office at said Boston, did then and there, by virtue of his said employment, have intrusted

3 to him, receive, and take into his possession and under his care a certain letter deposited in said branch post office and in the mail of said United States, intended to be carried by a letter-carrier employed in said department of said postal service, which letter then and there contained two pecuniary obligations of the Government of the United States of America, commonly called silver certificates, each for the amount and each of the value of one dollar; five United States postage stamps, each of the denomination and each of the value of two cents; and which said letter upon the outside envelope thereof was then and there addressed and directed as follows:

"JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.,*"

a more particular description of said letter, the address and direction thereof, being to said jurors unknown.

And said jurors on their oath aforesaid do say that the said Goode, such person then and there employed as aforesaid, the said letter containing said silver certificates and said postage stamps, so by him had, received, and possessed, did then and there unlawfully and feloniously secrete, embezzle, and destroy—

Against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the United States of America within and for the district of Massachusetts upon their oath aforesaid do further present that George Goode, of Boston, on the first day of March, in the year of our Lord one thousand eight hundred and ninety-five, at said Boston, within said district of Massachusetts, then and there being a person employed in a certain department of the postal service of the United States of America, to wit,

4 letter-carrier, employed in the letter-carrier department of the branch post office of the United States of America at said Boston, commonly called the Roxbury station of the Boston post office at said Boston, did then and there by virtue of his said employment have, receive, and take into his possession, in the regular course of his official duties as such person employed as aforesaid, a certain letter deposited in said branch post office, to wit, said Roxbury station of said Boston post office, which said letter then

and there contained two pecuniary obligations of the Government of the United States of America, commonly called silver certificates, each for the amount and each of the value of one dollar; five United States postage stamps, each of the denomination and each of the value of two cents; and which said letter, upon the outside envelope thereof, was then and there addressed and directed as follows:

"JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.,*"

a more particular description of said letter, the address and direction thereof, being to said jurors unknown.

And said jurors on their oath aforesaid do say that the said Goode, such person then and there employed as aforesaid, out of said letter deposited as aforesaid, and then and there in his possession in the regular course of his official duties as such person employed as aforesaid, said pecuniary obligations of the Government of the United States of America, commonly called silver certificates, each for the amount and each of the value of one dollar, and said United States postage stamps, of the denomination and each of the value of two cents, then and there contained in said letter, of the property and moneys of one Thomas J. Boynton, did then and there unlawfully and feloniously steal, take, and carry away, said letter not then and there having been delivered to the party to whom it was then and there directed—

5 Against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the United States of America within and for the district of Massachusetts upon their oath aforesaid do further present that George Goode, of Boston, on the first day of March, in the year of our Lord one thousand eight hundred and ninety-five, at said Boston, within said district of Massachusetts, a certain letter then and there, upon the outside envelope thereof, addressed and directed as follows:

"JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.,*"

a more particular description of said letter, the address and direction thereof, being to said jurors unknown, then and there in a certain mail, to wit, in the mail for the Roxbury district of said Boston, deposited in the branch post office of the United States of America at said Boston, commonly called the Roxbury station of the Boston post office, there situated, did then and there from and out of said mail feloniously steal, take, and carry away—

Against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the United States of America within and for the district of Massachusetts upon their oath aforesaid do further present that George Goode, of Boston, on the first day of

March, in the year of our Lord one thousand eight hundred and ninety-five, at said Boston, within said district of Massachusetts, a certain letter then and there, upon the outside envelope
6 thereof, addressed and directed as follows:

"JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.,*"

a more particular description of said letter, the address and direction thereof, being to said jurors unknown, of the value of two dollars and ten cents, of the property, goods, and chattels of one Thomas J. Boynton, then and there in a certain mail, to wit, in the mail for the Roxbury district of said Boston, deposited in the branch post office of the United States of America at said Boston, commonly called the Roxbury station of the Boston post office, there situated, did then and there from and out of said mail feloniously steal, take, and carry away—

Against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the United States of America within and for the district of Massachusetts upon their oath aforesaid do further present that George Goode, of Boston, on the first day of March, in the year of our Lord one thousand eight hundred and ninety-five, at Boston, within said district of Massachusetts, a certain letter then and there, upon the outside envelope thereof, addressed and directed as follows:

JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.,*"

a more particular description of said letter, the address and direction thereof, being to said jurors unknown, of the value of two dollars and ten cents, of the property, goods, and chattels of one Thomas J. Boynton, deposited in the branch post office of the United States of America at said Boston, commonly called the Roxbury station of the Boston post office, there situated, did then
7 and there from and out of said branch post office, to wit, said Roxbury station of the Boston post office, there situated, feloniously steal, take, and carry away—

Against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid for the United States of America within and for the district of Massachusetts upon their oath aforesaid do further present that George Goode, of Boston, on the first day of March, in the year of our Lord one thousand eight hundred and ninety-five, at said Boston, within said district of Massachusetts, a certain letter then and there, upon the outside envelope thereof, addressed and directed as follows:

"JOHN MULDOON, Esq.,
153 *Zeigler St., Roxbury, Mass.,*"

and which said letter then and there contained two pecuniary obligations of the Government of the United States of America, commonly called silver certificates, each for the amount and each of the value of one dollar; five United States postage stamps, each of the denomination and each of the value of two cents, a more particular description of said letter, the address, direction, and contents thereof, being to said jurors unknown, of the property, moneys, goods, and chattels of one Thomas J. Boynton, then and there in a certain branch post office, to wit, in the Roxbury station of the Boston post office of the United States of America, there situated, did then and there from said branch post office feloniously take, without the consent of the person having custody thereof, and open, embezzle,
8 and destroy such letter, which said letter then and there contained said silver certificates and said postage stamps, each of the value as aforesaid—

Against the peace and dignity of the said United States and contrary to the form of the statute in such case made and provided.

This indictment was found at the present term of this court, and on the 23rd day of March, A. D. 1895, the said defendant was set to the bar and had said indictment read to him, and for plea he said that thereof he was not guilty, and thereof for trial put himself upon the country.

Thereupon, on the 8th day of April, A. D. 1895, this cause was committed to a jury, which had been duly impanelled and sworn to try the same, videlicet, James W. Bassett, foreman, and fellows, videlicet, William H. Breed, George D. Brown, Edward Burns, Sumner A. Byam, Ira H. Carter, Charles T. Clifford, John A. Day, Orlando F. Deshon, Henry R. Diggs, Jesse P. Fritz, and Lewis W. Gannett, who, after hearing all matters and things concerning the same, returned their verdict therein and upon oath said that of said indictment the said defendant is guilty.

On the first day of May, A. D. 1895, the following bill of exceptions is filed in the clerk's office and allowed by the court, viz:

THE UNITED STATES }
v. }
GEORGE GOODE. }

Defendant's Bill of Exceptions.

This was an indictment against the defendant, alleged therein to be a letter-carrier employed in the postal service of the United States of America, in the branch post office commonly called the Roxbury station of the Boston post office, drawn under sec-
9 tions 5467 and 5469 of the Revised Statutes of the United States, a copy of which indictment is made part of the record and may be referred to. No objections in any form, at any time, was made to the indictment or to the introduction of any evidence herein reported.

The jury returned a general verdict of guilty upon the whole indictment.

It was admitted by the defendant at the trial that he had been a letter-carrier for upwards of thirty years, employed in the letter-carrier department of said branch post office at Roxbury.

THOMAS J. BOYNTON was called as a witness for the Government and testified that he was post-office inspector in charge at Boston; that he had been post-office inspector on two different occasions; that his second appointment was December the 12th, 1893; that previous to March 1st, 1895, his attention was called to losses from the mail in the Roxbury post office; that there were frequent complaints made to him of losses at the Roxbury station; that in consequence of those complaints he prepared two letters on the first day of March, 1895, one of which was addressed to Whitcomb, Keyes & Company, a firm of merchant tailors on Washington St., in Roxbury, and one was addressed to John Muldoon, Esq., 153 Zeigler St., Boston, Mass. Zeigler St. is in the Roxbury district. In the letter to Whitcomb, Keyes & Co. he enclosed five dollars in bills; in the letter to John Muldoon he enclosed two $1.00 silver certificates and five two-cent postage stamps. He sealed up these letters and carried them to the car station on Dudley St., in Roxbury, where by arrangement he met Mr. John W. McGrath, who was then at work in the Roxbury station. He gave these letters to McGrath, with instructions to place them in the mail of Letter-carrier George Goode. In answer to a question the witness then gave the numbers of the silver certificates placed in the letter addressed to John Muldoon. He further testified that he put pin-holes through each figure 2 on each of the five postage stamps contained in the letter addressed to John Muldoon; that he gave the letters to McGrath soon after two o'clock in the afternoon, so that the carrier would have them before he went out on the next delivery after that, which was some time between half past two and 2.50, and the same carrier would return to the Roxbury station and make another delivery in due course, on which he would start at five o'clock. Shortly before five o'clock he went to the car station again and met McGrath. He then went to the post office, and before going back at five o'clock he had visited the place of Whitcomb, Keyes & Company and had obtained there the letter and money which he had prepared and addressed to them; that the Whitcomb-Keyes letter was delivered all right, and that was the letter containing the five dollars which he had prepared at the same time with the Muldoon letter. He further testified that the letter addressed to John Muldoon was addressed to a number on the street which, so far as he knew, did not exist and was not on Mr. Goode's route. It was a letter which he could not deliver—which he ought to return, as we say, without taking it out of the office. He testified that he went into Major Killian's office, Major Killian being postmaster at the Roxbury station, and learned that the Muldoon letter was missing; that he ordered into that office all the carriers who might by any possibility have handled that letter in the due course of business. Three men were called in and among them was the defendant; that he made

inquiry of the men as to whether they had seen the letter addressed to John Muldoon, Esq., 153 Zeigler St. Mr. Goode, on being interrogated, stated, first, that he had not seen the letter
11 and afterwards that he had, and that it had been put in the "list box" by him; that a search was made of the post office and the letter not found; that clerks who might have access to the list were here sent for and brought into Goode's presence; then that a search was made of Mr. Goode's person; that Goode was in his shirt sleeves; that his coat was out in another room; that witness sent for the coat, and in the small pocket of it he found the five two-cent postage stamps which he had enclosed in the Muldoon letter. Witness identified the postage stamps, as did various others who were in the room; that he then interrogated minutely the defendant as to his possession of the stamps, to which the defendant made conflicting replies; that he asked the defendant if he stopped to talk anywhere on his route while he was out on the last delivery or if he came directly in; that the defendant replied that he came directly in; that he didn't stop anywhere; that he asked him if he took any drinks while he was on his route, and that the defendant said he did not; that he asked him if he went to the water-closet before he went out on the last delivery, and the defendant said he did not; that he asked him if he had been to the water-closet since he returned, and the defendant said he had not; that this conversation took place in the Roxbury station, in Major Killian's room; that the Roxbury station branch post office is situated on Warren St. between Dudley and Washington St., in that part of Boston formerly Roxbury. Major Killian was the superintendent of the station and had charge of that branch post office; that upon the search of Goode was found a certain amount of money in silver, about which witness asked a great many questions and received conflicting answers as to the amount of change and the character of the change which he had re-
12 ceived in various transactions, but no silver certificates were found upon him and no part of the Muldoon letter except said postage stamps enclosed therein; that he interrogated him in regard to places that he had stopped upon his route. Boynton further testified that he owned the stamps and the silver certificates that were contained in the Muldoon letter; that there was a two-cent postage stamp on the outside of the letter cancelled; that the defendant was a letter-carrier connected with the Roxbury station of the Boston post office. The old Roxbury post office was abolished some time ago and this station of the Boston post office established in its stead. He further testified that John W. McGrath is a foreman; that he was not sure of his title, whether he is foreman or whether he is assistant superintendent of mails in the Boston post office, and that he had been detailed to work in the Roxbury post office for the purpose of reorganizing the station; that Goode said he put the Muldoon letter in the "list box;" that the "list box," as far as he, Boynton, knew, is a box in which letters not deliverable are put, called "beats;" that any letter which a carrier could not deliver would be placed in the "list box." When a carrier

takes a letter and finds he cannot deliver it he puts it in the list. The letters are taken from there by some other employee and looked up to see if an owner can be found for them. Goode also stated that he might have put the letter in box of carrier 316. Upon cross-examination Boynton further testified that he was familiar with the arrangement of the Roxbury office, but he didn't know where the case was that contained the "list box." He testified further, in answer to questions, as follows:

Q. Who is John Muldoon?

A. I do not know any person of that name.

13 Q. And when you directed a letter to John Muldoon you did not direct it to any living person that you know of?

A. No one that I am acquainted with.

Q. And when you directed a letter to 153 Zeigler St. you directed that letter to a place the existence of which you did not know?

A. I directed it to a number I believed did not exist.

Q. You believe it now?

A. I do not suppose there is such a number.

He further testified that he did not know whereabouts on Zeigler St. Mr. Goode's route ended, but thought Goode had told him during the conversation in Major Killian's room it was numbered 32, but he did not know about it before.

He further testified to a question—You knew enough, however, to know that that letter was not a letter which could be carried out and delivered on his route?

A. Yes; I knew that that was the kind of a letter I intended to give him.

Q. The last you saw of that letter was up in the Roxbury car station?

A. Yes.

Q. Now, at the time that you saw that letter in that place, what was on it?

A. John Muldoon, Esq., 153 Zeigler St., Boston, Mass.

Q. That was all, wasn't it?

A. That is all except the postage stamp and the postmark.

Q. Was there a postage stamp on that letter then?

A. Yes.

Q. When was that put on?

A. I put it in my office the same day.

Q. Where?

A. In my office, right down here in this building (referring to the Federal building at Boston, Mass.).

He stated further that upon the back of that letter the figure 1 was underscored when it left him; that there was also upon the letter a postmark; that the postmark was West Cheshire, Conn.; that he thought there was such a place; that it was the regu-

14 lar postmark of the office except the date; that he found the envelope in his office with the postmark on, with the exception of the date; that he himself filled in the date of February the 28th, and that he himself filled in the year on the postmark—the year

1895; that he filled in the date with type which he had in his office for the purpose; that he cancelled the stamp that was upon the envelope in his office in the Federal building.

Q. What did you do about cancelling the stamp?

A. I took a canceller which we have and an inking pad and I, as we say, killed the stamp; I cancelled the stamp. It was just a piece of cork, and I hit that on the inking pad and hit the stamp with it, so as to deface the stamp.

Q. No particular mark?

A. Just an ordinary cancelling mark, such as is used in the smaller offices.

He said that he put the postage stamps in the Muldoon letter in his office in the Federal building, and that he was in the same place when he put the two $1.00 silver certificates in the letter and when he sealed the letter; that the stamps which were put into the letter he bought in the Boston post office and paid the regular price therefore.

Q. What time should you say that you went down to the branch office of the Roxbury station?

A. I went there pretty nearly five o'clock; probably a very few minutes before.

Q. When you went into the branch office there whom did you find there of the post-office employés?

A. McGrath was there; Prendergast and Killion.

Q. When you fixed that letter up—when you engineered it—did you put any letter in there?

A. Yes; I did.

15 Q. A communication?

A. Yes.

Q. Which you wrote?

—. Yes, sir.

Q. And that was addressed to this imaginary John Muldoon?

A. That was addressed to John Muldoon.

He further testified that he handed McGrath this prepared letter soon after two o'clock in the afternoon; that he handed him two letters prepared; that one he had spoken of as directed to Whitcomb-Keyes went through all right; that he went into Whitcomb-Keyes' and got his letter. On redirect examination the witness testified that there were complaints of losses of letters on Mr. Goode's route from various parties.

JOHN W. MCGRATH was called as a witness for the Government; testified that he was the assistant superintendent of the mailing division in the main office in Boston, in the Federal building; that on March 1st he was stationed temporarily, at the deputization of the Boston postmaster, at this Roxbury post office; he was there February 27, 28, and March 1st; he was sent there to reorganize the post office; that on March first he talked with Mr. Boynton (the former witness) through the telephone at about 11.45 a. m., and Boynton made an appointment to meet him in the Roxbury district at 1.30; that it was afterwards rearranged that Boynton should meet

him at 2 o'clock; that at two o'clock he was at the car station on Dudley St., which is close by the post office on Warren St.; that there he met Mr. Boynton and received from him two letters, one letter directed to a firm on Washington St.—that he did not pay any particular attention to the name—and the other directed to John Muldoon, Esq., 153 Zeigler St., Roxbury, Mass. He was instructed by Mr. Boynton to put the letter addressed to John Muldoon, Esq.,
16 into the box that Carrier Goode would collect on the sorting case for carriers in the Roxbury post office. All the mail that is on Goode's route that he is supposed to deliver is in that box; that Goode is on Washington St. district, a part of the Roxbury district; that Mr. Boynton charged him (McGrath) particularly with the care of the John Muldoon letter, and he said that he (Boynton) would look out for the other; that when he got to the office he made a memorandum of the address of that letter in the presence of Major Killian, and the memorandum read as he had just stated. He then described the location of the sorting case and the location of Goode's desk with reference to the stairway leading down cellar; that Goode's desk was very near that stairway. He then described what he did in regard to the Muldoon letter and the other one that Mr. Boynton had given him; testified that after leaving Mr. Boynton on Dudley St. he went into the Roxbury post office—that part where they sell stamps and do the business of the department; went through that door; saw Killian and got Killian to go out and point out Goode's box on the sorting case. He wanted Killian to see him put those two letters in Goode's box; that he put those two letters in Carrier Goode's box, 290; that he stepped back and waited till Carrier Goode came in to collect his box; that Goode came in at half past two. There were five cases, but three of them were used for sorting letters. As Goode came in he collected the one nearest the door first. He, McGrath, had put the letters in the second one; Goode collected that next. He then collected the third one and went to his desk; that he, McGrath, went to the box, called Major Killian's attention to it, and seeing that the box was empty walked around to Goode's desk with Superintendent of Mails O'Keefe. Then he came back and watched
17 Carrier Goode make his second collection to see if he brought anything back, which he did not. Then he, McGrath, moved around the office until the carriers went out on their delivery. They went out at 2.50. Then he, McGrath, went with Major Killian and examined the case. Killian and he looked for the letter to see if it was there, to see if it had been brought back and put into the "list box," or to see if they could find the letter on the floor of the office. This took place after the carriers had gone out. They could not find the letter; went into Killian's office and stayed there a few minutes; went to the car station and saw Boynton; then went back to the office. After being in the office a few minutes Mr. Boynton came in; then went out with Major Killian to look to see if the letter had been returned, but neither he nor Killian found the letter. He examined the boxes, but could not find a letter addressed to John Muldoon; went into Killian's office again and Boynton had

Carriers Weinstein, Delaney, and Goode called in. Witness then corroborated the testimony of Boynton in regard to the interrogation of the letter-carriers in Killian's office, and also in regard to the search of the person of Goode and in regard to the search of the coat belonging to Goode, and also in regard to the finding of the five two-cent stamps, and in regard to the questions and answers to and of Goode as to the two-cent stamps and in regard to Goode's movements, and in regard to going to the Grand Army hall and the search of Goode's effects there, and also in regard to the interrogation of Goode about the money and change in Goode's clothing, and that Goode denied that he ever had anything to do with the letter, and in regard to the disposition that Goode said he made of the letter, and in regard to the statement made by Goode as
18 to his depositing the letter in the box of carrier 316, and in regard to the various conversations and consultations between Goode and Boynton. Witness also identified the stamps produced at the trial as the ones taken from Goode's coat. On cross-examination witness testified that there were seventy-one persons in all that had access to the room where the sorting case was and to the boxes themselves; that the reason that they are called "list boxes" is that a carrier having a letter which is a "beat" or a "nixie"—something that he does not know what to do with—there is no such person in the district—he would take and put that letter in that box—that is, a distributing clerk would put them in the list and so would a carrier if he had a letter which did not belong to him. What we call "beats" would be thrown into this list.

Q. From that list where do they go?

A. The clerk who has charge of the floor will go through that and pick out the letters that are intended for boxes. These boxes are put inside for the public to get their mail out from. The other part this clerk outside would look after.

Q. How do these letters get into the list in the first place?

A. Sorted in there by these inside clerks.

He further testified that the letters where the parties are known go into the ordinary boxes; that the carrier comes in, collects these boxes, and goes to his desk. There are forty-eight of these desks. He testified that, as you come into the post office at the main door, on Warren St., there is a place where letters can be deposited through a slip in the wall; that he passed by that place and went in behind these boxes; that he passed over on the side and went into a door; that when he got into this door inside he still
19 had both letters that Boynton had given him; that Boynton gave him the letters in the car office, and he kept them until he got inside of the inside office; that when he got inside of the inside office he went to the outside office—to the work-room.

Q. Is that work-room back of these boxes?

A. They run parallel. This part where they sell stamps and back of that the superintendent's room and the work-room runs parallel. It was formerly two or three stores.

Q. And is that the place where these carriers' desks are?

A. Yes.

Q. Where did you go in the work-room?

A. I went right where the assorting case for carriers is, and as soon as I could, unobserved, put these two letters into box 290.

Q. So that what you did with the letter was to put it in the case where the "list box" is?

A. Yes, sir.

McGrath testified further that there were other letters in the box where he placed the Muldoon letter, that had been put there by clerks; that there might have been twenty-five others in box 290; that when he put the Muldoon letter in he understood that there was no such place as 153 Zeigler St., and he understood that there was no such person as John Muldoon; that he was told to put it into the box; that Goode would collect; that the letter-carriers that go out with mail have a duty to collect mail; that the carriers that go out also bring in mail collected on the streets.

It appeared from the testimony of one Wm. E. Delaney, a letter-carrier at said station, whose number on the first day of March was 315, that the defendant in the conversation with Boynton said he did not know whether the number on said Muldoon letter was 153 or 53.

It appeared from the testimony of one Jacob Weinstock that on the first day of March he was a letter-carrier at said branch post office and that his number was 331; that he carried as a part of his route from 36 and 51 Zeigler street to the end of said street, and that on said day he had not seen said Muldoon letter. It also appeared from said Weinstock's testimony that said defendant said he remembered the Muldoon letter and that it looked to him (the defendant) as though it was 53. It looked as though there was a 1 to it, but it was kind of blurred.

Upon being interrogated said Weinstock testified as follows:

"Q. Now, supposing you take from the boxes, you would go to what box for your Zeigler St. letters? Say March 1st.

A. 315.

Q. Supposing you should take from 315 a letter that was addressed to 15 or 20 Zeigler street, what would you do with that letter?

A. Put it into 290's box.

Q. That would be your duty?

A. Yes, sir.

Q. And your duty would be ended when you did that—when you put it back into a box that contained the letters that would go upon another route?

A. That is right.

Q. Now, suppose you had a letter on which was a number on Zeigler street which did not exist, what would your duty be with reference to that letter?

A. It all depends what number it would be. If it were higher than 36 I would indorse it, hunt up in the directory and see if I could find that party at another number on the street, and if not put it in the list.

Q. And if below 36?

A. Put it into 290's box.

Q. Suppose you get a letter addressed to Zeigler St. and without number and addressed to some person whom you do not
21 know, what would you do with that?

A. Put it into 290's box.

Q. That is the first portion of the street?

A. Yes, sir.

Q. On what ground would you do that?

A. Because we are supposed to put a letter into the box of the first carrier on the street if there is no number. He is supposed to indorse it and put it into my box.

Q. If you cannot find it you put it into 290's box?

A. If I cannot find it, then I put it into the list.

Q. So it has either to go into 290's box or to the list box, where there is trouble in the address, either in regard to the number or the person not being at the place?

A. Well, I would not put it into 290's box if his indorsement was on the back.

Q. What then?

A. Into the list.

Q. These are the only two places in regard to which you have any duty resting on you. You put it either in the list or in 290's box?

A. Yes, sir.

(By Mr. CASEY:)

Q. Suppose 290 had a letter addressed to a higher number than was on his route, what would be his duty?

A. To put it in my box.

(By Mr. BARTLETT:)

Q. Suppose he had a number that was a higher number than his and way beyond any of the numbers?

A. Put it in my box.

Q. Even if it was beyond your number?

A. Yes, sir.

It also appeared from the testimony of one Benway, a clerk in said branch post office, that he was the clerk in said office on said March 1st who had charge of the list boxes, and that he did not see said Muldoon letter on said day.

22 There was further evidence introduced by the Government, tending to corroborate Boynton and McGrath, to show that the defendant gave contradictory accounts of his knowledge of the Muldoon letter, of his whereabouts and stops after the letter had been taken by him from said box 290 and in explanation of his having the stamps in his possession which were found in his coat, to prove what the defendant and Mr. Boynton and others said in Mr. Killion's private office during the investigation of the defendant in regard to the subject-matter. It also appeared in evidence that said Killion died the second day of said March.

The Government introduced further testimony to show the whereabouts of the defendant after he left Roxbury station on the 2.50 p. m. delivery on March 1st, which tended to show opportunity for disposing of the John Muldoon letter and for expenditure or exchange of the silver certificates therein contained.

The defendant took the stand, and his testimony and the testimony of the Government witnesses were in direct conflict on many essential points as to what took place during the investigation in Major Killion's private office.

The defendant testified that he had been carrying letters from this branch post office as a letter-carrier for the past 7 or 8 years, in said Roxbury district, and his number as a letter-carrier was 290.

It also appeared from the testimony of said defendant that he had seen the letter to John Muldoon and that he called the number 53 Zeigler street; that he had seen said Muldoon letter with two others, and that on his way out on the 2.50 trip he put them in the list.

23 There was further evidence introduced by the Government, which is not material to the questions raised by this bill of exceptions, and is therefore omitted.

At the close of the evidence the defendant requested the court to rule and instruct the jury as follows:

First. That the allegations in said indictment, in the first count thereof and in all other counts, that the letter alleged to have been embezzled "was intended to be conveyed by mail," and also the allegations contained in the said indictment that the said letter was "intended to be carried or deliveredby the defendant, a mail-carrier or letter-carrier," must be proved as laid, and that upon all the evidence in the case the Government have failed to prove either one of the said allegations, and that a verdict must be returned for the defendant.

Second. That the allegations in the counts of said indictment which charge the defendant with stealing a letter from the mails must be established by proof of the fact that the Muldoon letter was deposited in and became a part of the mail matter which was intrusted to and came into the possession of some postal employee to be transmitted by means of the mail of the United States to the person to whom it was addressed, and that upon all the evidence in the case the said Muldoon letter was at no time deposited in the mails within the meaning of the statute under which the said counts of the said indictment are drawn, and at no time became a letter or any part of the mail matter which was to be transmitted to the person to whom it was addressed by means of the mails of the United States, and even if it should be found that the defendant em-

24 bezzled, secreted, destroyed, or stole the said letter or the contents thereof from the Roxbury post office, so called, or by virtue of his employment in the postal service, even then the defendant cannot be convicted of any crime charged against him under the indictment and the counts thereof drawn under the provisions of section- 5467 and 5469 of the Revised Statutes of the United States.

Third. That upon all the evidence in this case the Muldoon letter was not "intended to be conveyed by mail," within the meaning of section 5467 of the Revised Statutes of the United States.

Fourth. That upon all the evidence in the case the Muldoon letter was not "intended to be carried or delivered by any letter-carrier" of the United States, within the meaning of said section 5467.

Fifth. That upon all the evidence in the case the Muldoon letter, so called, never became a part of the mail or any letter or package which could become the subject of larceny or could be stolen out of any post office or branch post office of the United States, within the meaning of section 5469 of the Revised Statutes of the United States.

Sixth. That it is a material allegation that the place from which said letter or its contents are alleged to have been stolen is a branch post office of the United States, and upon all the evidence in the case the Government has not shown by any competent evidence that the "Roxbury station of the Boston post office is a post office or branch post office" or any authorized depository for mail matter, and verdict should be rendered for the defendant.

25 Seventh. That this court has no jurisdiction over any offense which has been proved by the Government against the defendant.

Eighth. And the defendant asks the court to charge the jury as follows: That in order that a letter may become "mail matter" under sections 5467 and 5469 it must be one addressed to a person who is in existence and to an address that exists, and it must be deposited in the mails in some one of the ordinary ways provided by the postal authorities.

Ninth. If the jury shall find that one Boynton, an inspector employed in the mail service of the United States, wrote the Muldoon letter, so called, and enclosed said letter, together with the two silver certificates for $1.00 each and five two-cent postage stamps, in an envelope or covering and addressed said envelope or covering to John Muldoon, Esq., 153 Zeigler St., Roxbury, Mass., and affixed to the said covering a postage stamp, which he himself cancelled before said letter got into any post office, and also stamped said envelope with a postmark of West Cheshire, Conn., upon which he himself filled in the date, and that John Muldoon was a person not in existence, and that a 153 Zeigler St. was a place not in existence, and, after having prepared the said letter, delivered it to another inspector of the department, and then that inspector took the letter so postmarked and cancelled and carried it into the Roxbury station of the Boston post office and deposited it on the sorting case in said post office, from which place it was taken by the defendant, then said letter was not deposited in any post office or branch post office and it never became a part of the mail matter which came into the possession of the Post Office Department or any agent

26 thereof for the purpose of being transmitted or delivered by any letter-carrier, and was not such a letter as was intended to be conveyed by mail within the meaning of section 5467 of the

Revised Statutes, and was not such mail, letter, or package as that described and intended by section 5469 of the said statutes.

The court refused so to rule, except so far as is set forth hereafter, and ruled and instructed the jury in part as follows:

"In order to maintain this indictment the Government must prove with a degree of certainty, which I have stated, the following elements: A United States mail-carrier has embezzled a letter intrusted to him, deposited to be carried by mail. In the first place, that he is such a carrier; that he is a post-office mail-carrier; second, that a letter was deposited in the United States post office, established under the authority of the Postmaster General of the United States; that that letter contained the evidence in this case—two $1.00 United States silver certificates and five postage stamps; that that letter came into the possession of the defendant in his capacity as a carrier, to be delivered or carried, and that he appropriated it fraudulently to his own use. Those propositions are all to be established to your satisfaction."

It also appears and the jury may infer that the Roxbury branch of the Boston post office is a post office or a branch established under the authority of the Postmaster General of the United States, from the fact that it existed during all these years; that it has existed for many years past as a branch of the Boston post office; that is sufficient evidence that it has been established under the authority of the Postmaster General."

27 "It also appears here, upon the testimony on the part of the Government, that a letter, on the first day of March, was placed in this post office, and if the evidence in behalf of the Government is to be believed, that this letter addressed to Muldoon was put into the post office under the circumstances detailed; that is a sufficient evidence of that part of the indictment. Then, again, I understand it is also conceded that a letter, such as is described by the Government, addressed to one Muldoon at 153 Zeigler St., in Roxbury, was not only deposited in the United States mail but came into the possession of the defendant, in his capacity as carrier, to be delivered or carried. I simply wish to repeat to you again that in all this evidence if you think it was clearly proved beyond any substantial contradiction and substantial certainty that this letter was embezzled, taken, and appropriated by the defendant, then you are to find him guilty."

Other full and appropriate instructions were given to the jury, who returned a verdict of guilty.

To the refusal of the judge to give the rulings and instructions prayed for, the defendant duly and seasonably excepted and prays that his exceptions may be allowed.

GEORGE GOODE,
By CHARLES W. BARTLETT &
ELBRIDGE R. ANDERSON,
Of Counsel.

And now, on this first day of May, A. D. 1895, it is consid*sid*ered by the court that the said George Goode be imprisoned at hard

labor in the State prison at Boston for three years, and that he stand committed until said sentence be performed.

28 I, Frank H. Mason, clerk of the district court of the United States for the district of Massachusetts, hereby certify that the foregoing is a true copy of the record in the case of United States, by indictment, *v.* George Goode, numbered 1497, on the docket of said court.

I further certify that hereto annexed are true copies of petition for writ of error and the assignment of errors, a true copy of the bond on writ of error, with the approval thereof, and also the original citation, with the officer's return of service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said district court, at Boston, in said district, this 10th day of May, A. D. 1895.

Seal of the District Court, Massachusetts.

FRANK H. MASON, *Clerk.*

29 UNITED STATES OF AMERICA:

UNITED STATES
v.
GEORGE GOODE.

Petition for Writ of Error.

To the honorable the justices of the Supreme Court of the United States or the judge of the district court of the United States for the district of Massachusetts:

And now comes the defendant, George Goode, and complains that in the records and proceedings and also in the rendition of judgment in the plea between the United States and himself, defendant, tried in the district court of the United States for said district, at the April term, 1895, in which judgment was rendered against him on the first day of May, 1895, manifest error hath intervened, to the great damage of said defendant; wherefore he prays for an allowance of a writ of error and such further processes as may cause the same to be corrected by the Supreme Court of the United States.

GEORGE GOODE.
CHARLES W. BARTLETT,
ELBRIDGE R. ANDERSON,
His Att'ys.

And thereafterwards appeared the said defendant and for errors in the proceedings of the district court of the United States for the district of Massachusetts in the plea and judgment thereon between the said United States and the said George Goode and the several rulings and instructions of the said court therein assigns as

30 follows:

First. The said district court erred in refusing to rule, as requested by the said defendant, that the allegation in said in-

dictment, in the first count thereof and in all other counts, that the letter alleged to have been embezzled "was intended to be conveyed by mail," and also the allegations contained in said indictment that the said letter was "intended to be carried or delivered by the defendant, a mail-carrier or letter-carrier," must be proved as laid, and that upon all the evidence in the case the Government have failed to prove either one of the said allegations, and that a verdict must be returned for the defendant.

Second. The said district court erred in refusing to rule, as requested by the said defendant, that the allegations in the counts of said indictment which charged the defendant with stealing a letter from the mails must be established by proof of the fact that the Muldoon letter was deposited in and became a part of the mail matter which was intrusted to and came into the possession of some postal employee, to be transmitted by means of the mail of the U. S. to the person to whom it was addressed, and that upon all the evidence in the case the said Muldoon letter was at no time deposited in the mails, within the meaning of the statute under which the said counts of the said indictment are drawn, and at no time became a letter or any part of the mail matter which was to be transmitted to the person to whom it was addressed by means of the mails of the U. S., and even if it should be found that the said defendant embezzled, secreted, destroyed, or stole the said letter or the contents thereof from the Roxbury post office, so called, or by virtue of his employment in the postal service, even then the defendant
31 cannot be convicted of any crime charged against him under the indictment and the counts thereof drawn under the provisions of section 5467 and 5469 of the Revised Statutes of the U. S.

Third. The said district court erred in refusing to rule, as requested by the said defendant, that upon the evidence in this case the Muldoon letter was not "intended to be conveyed by mail" within the meaning of section 5467 of the Revised Statutes of the U. S.

Fourth. The said district court erred in refusing to rule, as requested by the said defendant, that upon all the evidence in the case the Muldoon letter was not "intended to be carried or delivered by any letter-carrier" of the U. S. within the meaning of said section 5467.

Fifth. The said district court erred in refusing to rule, as requested by the said defendant, that upon all the evidence in the case the Muldoon letter, so called, never became a part of the mail or any letter or package which could become the subject of larceny or could be stolen out of any post office or branch post office of the U. S. within the meaning of section 5469 of the Revised Statutes of the U. S.

Sixth. The said district court erred in refusing to rule, as requested by the said defendant, that it is a material allegation that the place from which said letter or its contents are alleged to have been stolen is a branch post office of the U. S., and upon all the evidence in the case the Government has not shown by any
32 competent evidence that the "Roxbury station of the Boston

post office" is a "post office" or "branch post office" or any authorized depository for mail matter, and verdict should be rendered for the defendant.

Seventh. The said district court erred in refusing to rule, as requested by the said defendant, that this court has no jurisdiction over any offense which has been proved by the Government against the defendant.

Eighth. The court erred in refusing to charge the jury, as requested by the defendant, as follows: And the defendant asks the court to charge the jury as follows: That in order that a letter may become "mail matter," under sections 5467 and 5469, it must be one addressed to a person who is in existence and to an address that exists, and it must be deposited in the mails in some one of the ordinary ways provided by the postal authorities.

Ninth. That the court erred in refusing to charge the jury, as requested by the defendant, as follows: If the jury shall find that one Boynton, an inspector, employed in the mail service of the U. S., wrote the Muldoon letter, so called, and enclosed said letter, together with two silver certificates for one dollar each and five two-cent postage stamps, in an envelope or covering and addressed said envelope or covering to John Muldoon, Esq., 153 Zeigler St., Roxbury, Mass., and affixed to the said covering a postage stamp, which he himself cancelled before said letter got into any post office, and also stamped said envelope with a postmark of West Cheshire, Connecticut, upon which he filled in the date, and that John Muldoon was a person not in existence, and that 153 Zeigler St. was a place not in existence, and after having prepared the said letter
33 delivered it to another inspector of the department, and then that inspector took the letter so postmarked and cancelled and carried it into the Roxbury station of the Boston post office and deposited it on the sorting case in said post office, from which place it was taken by the defendant, then said letter was not deposited in any post office or branch post office and it never became a part of the mail matter which came into the possession of the Post Office Department or any agent thereof for the purpose of being transmitted or delivered by any letter-carrier, and was not such a letter as was intended to be conveyed by mail within the meaning of section 5467 of the Revised Statutes, and was not such mail letter or package as that described and intended by section 5469 of the said statutes.

Tenth. And the district—erred in leaving the said case to the jury and instructing them in part as follows: "In order to maintain this indictment the Government must prove, with a degree of certainty which I have stated, the following elements, the offense charged here being that the defendant, as a carrier, a United States mail-carrier, has embezzled a letter intrusted to him, deposited to be carried by mail: In the first place, that he is such a carrier; that he is a post-office mail-carrier; second, that a letter was deposited in the United States post office established under the authority of the Postmaster General of the United States; that that letter contained the evidence in this case—two $1.00 United States silver certificates and five post-

age stamps; that that letter came into the possession of the defendant, in his capacity as a carrier, to be delivered, and that he appropriated it fraudulently to his own use."

34 Those propositions are all to be established to your satisfaction. "It also appears, and the jury may infer, that the Roxbury branch of the Boston post office is a post office or a branch established under the authority of the Postmaster General of the United States from the fact that it existed during all these years; that it has existed for many years past as a branch of the Boston post office. That is sufficient evidence that it has been established under the authority of the Postmaster General." And the said district court further erred in submitting the said cause to the jury and instructing them as follows: "It also appears here, upon the testimony on the part of the Government, that a letter on the first day of March was placed in this post office, and if the evidence in behalf of the Government is to be believed, that this letter addressed to Muldoon was put into the post office under the circumstances detailed; that is a sufficient evidence of that part of the indictment. Then, again, I understand it is also conceded that a letter such as is described by the Government, addressed to one Muldoon at 153 Zeigler street, in Roxbury, was not only deposited in the United States mail, but came into the possession of the defendant, in his capacity as carrier, to be delivered." And the district court further erred, after having instructed the jury in regard to the theory of the Government's case and the theory of the defense, in instructing them as follows: "I simply wish to repeat to you again that, in all this evidence, if you thought it was clearly proved beyond any substantial contradiction and substantial certainty that this letter was embezzled, taken, and appropriated by the defendant, then you are to find him guilty."

GEORGE GOODE.
BARTLETT & ANDERSON,
His Att'ys.

35 Know all men by these presents that we, George Goode, of Boston, in the district of Massachusetts, as principal, & Annie Morgan, of Boston, in said district, as surety, are held and firmly bound unto the United States of America in the sum of two hundred dollars, to be paid to the said United States of America; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the first day of May, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas the above-named George Goode has prosecuted a writ of error to the Supreme Court of the United States, returnable on the thirty-first day of May, 1895, to reverse the judgment of conviction rendered by the judge of the district court of the United States for the district of Massachusetts in the cause entitled The United States of America, by indictment, *v.* George Goode, defendant, No. 1497 on the criminal docket of said district court:

Now, therefore, the condition of this obligation is such that if the above-named George Goode shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force, power, and virtue.

GEORGE GOODE. [SEAL.]
ANNIE MORGAN. [SEAL.]

Signed, sealed, and delivered in presence of—
FRANK H. MASON.

Approved May 1, 1895.
THOS. L. NELSON, *U. S. D. J.*

36 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, on the thirty-first day of May current, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Massachusetts, in a cause entitled United States, by indictment, *versus* George Goode, defendant, wherein the said defendant is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas L. Nelson, judge of the district court of the United States for the district of Massachusetts, this first day of May, in the year of our Lord one thousand eight hundred and ninety-five.

THOS. L. NELSON, *U. S. D. J.*

[Endorsed:] 2688. United States marshal's office, P. O. building, Boston, Mass., May 2, 1895. United States district court, Mass. dist. Filed in clerk's office May 3, 1895.

UNITED STATES OF AMERICA, }
District of Massachusetts, } *ss:*

BOSTON, *May* 2, 1895.

I hereby certify that on the second day of May, 1895, I served the within citation by giving to John H. Casey, ass't United States attorney for the district of Massachusetts, a true and attested copy of said citation in hand, at Boston.

F. J. MACDONALD,
Deputy United States Marshal.

Fees.

Service	2 00
Copy	1 00
	$3 00

Endorsed on cover: Case No. 15,903. Massachusetts D. C. U. S. Term No., 1019. George Goode, plaintiff in error, *vs.* The United States. Filed May 13, 1895.

Office Supreme Court U. S.
FILED.
MAY 20 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

GEORGE GOODE, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. ~~1010~~ 616

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

GEORGE GOODE, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 1019.

MOTION TO ADVANCE.

The plaintiff in error was indicted in the district court of the United States for the district of Massachusetts, for embezzling a letter and its contents addressed to a fictitious person and address, which came into his possession as letter carrier, in violation of sections 5467 and 5469 of the Revised Statutes, and was convicted and sentenced to be imprisoned at hard labor for three years. He has been admitted to bail in the sum of $2,000 pending the decision of this court on his writ of error.

The Solicitor-General, in accordance with rule 26, section 3, respectfully moves the court to advance the case on the docket, and set it down for hearing at an early day during the next term.

17533

Notice of this motion has been served on the counsel for the plaintiff in error, and proof thereof filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

Office Supreme Court, U. S.
FILED.
MAY 20 1895
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 1019. 616

UNITED STATES

vs.

GEORGE GOODE.

BRIEF IN OPPOSITION TO THE MOTION TO ADVANCE.

CHARLES W. BARTLETT.
FRANCIS H. STEPHENS.
Attys. for Defendant.

Law Reporter Print

Office Supreme Court, U. S.
FILED.
MAY 20 1895
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 1019. 616

UNITED STATES

vs.

GEORGE GOODE.

BRIEF IN OPPOSITION TO THE MOTION TO ADVANCE.

CHARLES W. BARTLETT.
FRANCIS H. STEPHENS.
Attys. for Defendant.

Law Reporter Print

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 1019.

UNITED STATES

vs.

GEORGE GOODE.

BRIEF IN OPPOSITION TO THE MOTION TO ADVANCE.

The defendant in this case was convicted of violating Sections 5467 and 5469 of the Revised Statutes (postal regulations), by means of a decoy letter addressed to a fictitious person at a fictitious address; this is the principal question in the case.

Motions to advance were not allowed:

1. Even though important State interests were involved.
   B. & O. RR. *vs.* Marshall, 131 U. S., XCIX, Appendix.

2. Where the real parties were individuals.
   Miller *vs.* New York, 12 Wallace, 159.

3. Where the question was whether the laws for the collection of taxes imposed by the city of Davenport were revenue laws of the State of Iowa.

4. When the questions in dispute would not embarrass the operations of the government.
   Hoge *vs.* Richmond & Danville RR., 93 U. S., 1.
   U. S. *vs.* Fossatt, 21 How., 445.

5. Where the case had no merits.
   Morsell *vs.* First Nat. Bk., 91 U. S., 356.

6. Where the case involved questions raised in another case.

Louisiana *vs.* New Orleans, 103 U. S., 521.

7. Where there was an appeal from a decree on the merits in a suit removed from a State court to the circuit court.

Call *vs.* Palmer, 106 U. S., 39.

8. Where the case was one of great public importance.

Carter *vs.* Greenhow, 109 U. S., 63.

Motions to advance were allowed:

1. Upon the representation of the Postmaster General that the questions in dispute would embarrass the operations of the government while they remained unsettled. The court stated that thereafter the facts must be stated in order that court might judge if that would be so.

U. S. *vs.* Norton, 91 U. S., 558.

2. Where a State court refused to let go its jurisdiction on a petition for removal, and the Supreme Court of the State affirmed the ruling.

B. C. N. & N. Rwy. *vs.* Dunn, 121 U. S., 182.

Counsel do not know on what grounds the Government bases its motion to advance.

This is certainly not a case where the question involved will embarrass the operations of the Government if not immediately settled.

If the Government bases its motion on the fact that the defendent is out on bail, the motion must be denied. For it seems that the court denied a motion to advance on that very ground in Ward *vs.* State of Maryland, 12 Wallace, 163.

Respectfully submitted.

CHARLES W. BARTLETT.
FRANCIS H. STEPHENS.
Attys. for Defendant.

Office Supreme Court, U. S.
FILED.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 616.

GEORGE GOODE, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF OF PLAINTIFF IN ERROR.

CHARLES W. BARTLETT,
ELBRIDGE R. ANDERSON,
Attys. for Plaintiff in Error.

(15,903.)

SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES *vs.* GEORGE GOODE.

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STATEMENT OF THE CASE.

This was an indictment against the defendant, a letter carrier employed in the postal service of the United States in an office alleged in the indictment to have been a branch post office of the United States, and commonly called the Roxbury station of the Boston post office. The indictment was drawn in seven counts, to be found on the second, third, fourth, fifth and sixth pages of the Transcript of Record.

The first three counts of the said indictment were drawn under Sect. 5467 of the Revised Statutes of the United States, and the last four counts of the said indictment were drawn under Sect. 5469 of said statutes.

The whole case was submitted to the jury under certain instructions by the Court, the material part of which are to be found on page 17 of the Transcript of Record. The jury returned a general verdict of guilty upon the whole indictment.

It appeared that Thomas J. Boynton, a post office inspector in charge at Boston, prepared two letters on the first day of March, 1895, one of which was addressed to Whitcomb Keyes & Co., a firm of merchant tailors on Washington Street in the Roxbury district of Boston, and one addressed to John Muldoon, Esq., No. 153 Zeigler Street, Boston, Mass. These letters were prepared by him for the purpose of ascertaining who, in the said post office, had been guilty of stealing from the mails, or destroying letters about which certain complaints had been made before the time that the said letters were prepared. The Whitcomb Keyes letter went through the mail all right and was delivered to them. The John Muldoon letter, so called, contained two one-dollar silver certificates and five two cent postage stamps. John Muldoon was a fictitious person, and the address was a fictitious address, and of course was not on Mr. Goode's route. It was a letter which could not be delivered and was a letter which the inspector did not intend to be carried out and delivered on Goode's route.

Boynton prepared said Muldoon letter in his own office by tak-

ing an envelope and placing therein the money and the postage stamps, which he said he owned. He wrote something on a piece of paper and put it in said envelope, putting a postmark upon it at the same time, the postmark being West Cheshire, Conn. He did not know that there was any such post office as West Cheshire, Conn. He found this envelope in his office with the postmark, with the exception of the date, on it. He filled in the date of Feb. 28, and he also filled in the year on the postmark. He then took a postage stamp, affixed it to the letter and cancelled the same himself upon the envelope in his office in the Federal building. He took it and delivered it to a man by the name of McGrath, who was the assistant superintendent of the mailing division in the main office in Boston, and who had been sent out to the Roxbury post office to reorganize the post office.

Boynton met McGrath at the car station on Warren Street in Boston outside of the post office, and gave to him two letters, one of which was the Muldoon letter. McGrath took the Muldoon letter and did not deposit it in the Roxbury post office in any of the ordinary ways for depositing the mail. He passed by the places on the outside of the post office and on the inside of the office where letters are usually mailed, went into the back room of the post office where the letters after going through the usual course of the mails are sorted, and put these two letters into Goode's box, No. 290. Shortly afterwards Goode came in and took the letters from the box and went to his desk, which desk was situated in the same room with the box out of which he had taken these two letters placed by McGrath. After that time the letter never was seen by any one connected with the postoffice department, and on the same afternoon the postage stamps contained in the said letter were found in the small outside pocket of Goode's coat which had been hanging in the room in which Goode's desk was situated, and which Goode did not have on at the time. McGrath testified that the letter should have been put in the list box. That list box is a box where a carrier having a letter which is a "beat" or a "nixie," a letter he does not know what to do with, having no such person in his district, will take that letter and put it in that box, that is, the distributing clerk will put such a letter in the list box, and so will a carrier if he has a letter that does not

belong to him. In the post office where McGrath carried the letter, as a person went into the main door on Warren Street, there is a place where letters can be deposited through a slip in the wall. McGrath passed by that place and went in behind the boxes, and passed over on the side and went into a door, and when he got into the door inside he still had both letters that Boynton had given him in the car office, and he kept them until he got inside of the inside office. When he got inside of the inside office, he went to the outside office, to the workroom, to the place where the carriers' desks are, to the sorting case for carriers, and put the letter in box No. 290 of the sorting case, the place where the "list box" is. There were a large number of other letters in the box where this Muldoon letter was put by McGrath. McGrath knew at the time that there was no such place as No. 153 Zeigler Street, and that there was no such person as John Muldoon, and he put the letter into that box for the purpose of having Goode steal it if he would. There was no evidence introduced in the case which tended directly to prove that this branch post office, so called, was a branch post office established by authority of the Postmaster-General of the United States.

Upon this evidence the defendant requested the Court to rule and to instruct the jury: —

First. That upon the evidence in the case, this letter, prepared and manipulated as it was, was not a letter "intended to be conveyed by mail" under Sect. No. 5467 of the Revised Statutes of the United States hereinbefore referred to, and also that upon the evidence in this case in regard to the Muldoon letter, that it was not a letter intended to be carried or delivered by the defendant as a mail carrier or letter carrier within the same section of the statute, and asked the judge to instruct the jury that the Government had failed to prove either of these allegations, and that a verdict be returned for the defendant (see page 15 of the Transcript of Record).

Second. That the Muldoon letter prepared and manipulated as it was by the inspector, was at no time deposited in the mail in the meaning of Sects. Nos. 5467–5469 of the Revised Statutes of the United States, and at no time became a letter or any part of the mail matter which was to be transmitted to the person to whom it was addressed by means of the mails of the United States, and that if the jury did

find that the defendant did embezzle, secrete, destroy or steal the alleged letter or the contents thereof in the Roxbury post office, so called, or by virtue of his employment in the postal service, then the defendant cannot be convicted of any crime charged against him under this indictment. (See page 15 of the Transcript of Record.)

Third. That upon all the evidence in this case the Muldoon letter was not "intended to be conveyed by mail" in the meaning of Sect. 5467 of the Revised Statutes of the United States. (See page 16 of the Transcript of Record.)

Fourth. That upon all the evidence in the case, the Muldoon letter was not "intended to be carried or delivered by any letter carrier of the United States" within the meaning of the said Sect. 5467. (See page 16 of the Transcript of Record.)

Fifth. That upon all the evidence in the case, the Muldoon letter, so called, never became a part of the mail or any letter or package which could become the subject of larceny or could be stolen out of any post office or any branch post office within the meaning of Sect. 5469 of the Revised Statutes of the United States.

Sixth. That upon the evidence in the case, the Roxbury branch of the Boston post office was not shown to be a post office or a branch post office or any authorized depository for mail matter, and asked that a verdict be rendered for the defendant.

Seventh. The defendant asked the Court to rule that it had no jurisdiction over any offence which had been proved by the Government against the defendant.

Eighth. The defendant requested the Court to leave the case to the jury and instruct them as follows: That in order that a letter may become mail matter under Sects. 5467–5469, it must be one addressed to a person who is in existence and to an address that exists, and must be deposited in the mails in some one of the ordinary ways provided by the postal authorities.

Ninth. The defendant asked the Court to instruct the jury that if the jury should find that one Boynton, an inspector employed in the mail service of the United States, wrote the Muldoon letter, so called, and enclosed the letter, together with the two silver certificates of one dollar each and five two-cent stamps, in an envelope or covering, and addressed the said envelope or covering to John Mul-

doon, Esq., No. 153 Zeigler Street, Boston, Mass., and affixed to the said covering a postage stamp which he himself cancelled before said letter got into any post office, and also stamped that envelope with a postmark of West Cheshire, Conn., and upon which he himself filled in the date, that John Muldoon was a person not in existence, and that No. 153 Zeigler Street was a place not in existence, and after having prepared said letter delivered it to another inspector of the department, and then that inspector took the letter so postmarked and cancelled and carried it into the Roxbury station of the Boston post office and deposited it in the sorting case in said post office, from which place it was taken by the defendant, then said letter was not deposited in any post office, or branch post office, and it never became a part of the mail matter which came into the possession of the post office department, or any agent thereof, for the purpose of being transmitted or delivered by any letter carrier, and was not such a letter as was intended to be conveyed by mail in the meaning of Sect. 5467 of the Revised Statutes, and was no such mail, letter or package as that described and intended by Sect. 5469 of the said statutes.

The Court refused to instruct the jury as requested, but did rule, as found upon page 17 of the record, practically that the only question of fact which the jury had to find was that the Muldoon letter, so called, was embezzled, taken and appropriated by the defendant, and that if they should find that fact they would find him guilty. And the Court went further and stated that the very facts that were disputed by the defendant in regard to the letter were admitted.

The defendant excepted to each and every one of the refusals of the Court to rule and instruct the jury hereinbefore related.

SPECIFICATIONS OF ERRORS RELIED UPON.

First. The said District Court erred in refusing to rule, as requested by the said defendant, that the allegation in said indictment in the first count thereof and in all other counts, that the letter alleged to have been embezzled "was intended to be conveyed by mail," and also the allegations contained in said indictment that the said letter was "intended to be carried or delivered by the defendant, a mail carrier or letter carrier," must be proved as laid,

and that upon all the evidence in the case the Government have failed to prove either one of the said allegations, and that a verdict must be returned for the defendant.

Second. The said District Court erred in refusing to rule, as requested by the said defendant, that the allegations in the counts of said indictment which charged the defendant with stealing a letter from the mails must be established by proof of the fact that the Muldoon letter was deposited in and became a part of the mail matter which was intrusted to and came into the possession of some postal employee, to be transmitted by means of the mail of the United States to the person to whom it was addressed, and that upon all the evidence in the case the said Muldoon letter was at no time deposited in the mails, within the meaning of the statute under which the said counts of the said indictment are drawn, and at no time became a letter or any part of the mail matter which was to be transmitted to the person to whom it was addressed by means of the mails of the United States, and even if it should be found that the said defendant embezzled, secreted, destroyed or stole the said letter or the contents thereof from the Roxbury post office, so called, or by virtue of his employment in the postal service, even then the defendant cannot be convicted of any crime charged against him under the indictment and the counts thereof drawn under the provisions of Sects. 5467 and 5469 of the Revised Statutes of the United States.

Third. The said District Court erred in refusing to rule, as requested by the said defendant, that upon the evidence in this case the Muldoon letter was not "intended to be conveyed by mail" within the meaning of Sect. 5467 of the Revised Statutes of the United States.

Fourth. The said District Court erred in refusing to rule, as requested by the said defendant, that upon all the evidence in the case the Muldoon letter was not "intended to be carried or delivered by any letter carrier" of the United States within the meaning of said Sect. 5467.

Fifth. The said District Court erred in refusing to rule, as requested by the said defendant, that upon all the evidence in the case the Muldoon letter, so called, never became a part of the mail

or any letter or package which could become the subject of larceny or could be stolen out of any post office or branch post office of the United States within the meaning of Sect. 5469 of the Revised Statutes of the United States.

Sixth. The said District Court erred in refusing to rule, as requested by the said defendant, that it is a material allegation that the place from which said letter or its contents are alleged to have been stolen is a branch post office of the United States, and upon all the evidence in the case the Government has not shown by any competent evidence that the "Roxbury station of the Boston post office" is a "post office" or "branch post office" or any authorized depository for mail matter, and a verdict should be rendered for the defendant.

Seventh. The said District Court erred in refusing to rule, as requested by the said defendant, that this court has no jurisdiction over any offence which has been proved by the government against the defendant.

Eighth. The Court erred in refusing to charge the jury, as requested by the defendant, as follows: That in order that a letter may become "mail matter," under Sects. 5467 and 5469, it must be one addressed to a person who is in existence and to an address that exists, and it must be deposited in the mails in some one of the ordinary ways provided by the postal authorities.

Ninth. That the Court erred in refusing to charge the jury, as requested by the defendant, as follows: If the jury shall find that one Boynton, an inspector employed in the mail service of the United States, wrote the Muldoon letter, so called, and enclosed said letter, together with two silver certificates for one dollar each and five two-cent stamps, in an envelope or covering, and addressed said envelope or covering to John Muldoon, Esq., 153 Zeigler Street, Roxbury, Mass., and affixed to the said covering a postage stamp which he himself cancelled before said letter got into any post office, and also stamped said envelope with a pōstmark of West Cheshire, Conn., upon which he filled in the date, and that John Muldoon was a person not in existence, and that 153 Zeigler Street was a place not in existence, and after having prepared the said letter delivered it to another inspector of the department, and then

that inspector took the letter so postmarked and cancelled and carried it into the Roxbury station of the Boston post office and deposited it in the sorting case in said post office, from which place it was taken by the defendant, then said letter was not deposited in any post office or any branch post office, and it never became a part of the mail matter which came into the possession of the post office department or any agent thereof for the purpose of being transmitted or delivered by any letter carrier, and was not such a letter as was intended to be conveyed by mail within the meaning of Sect. 5467 of the Revised Statutes, and was not such mail, letter or package as that described or intended by Sect. 5469 of the said statutes.

Tenth. And the District Court erred in leaving the said case to the jury and instructing them in part as follows: "In order to maintain this indictment the Government must prove, with a degree of certainty which I have stated, the following elements, the offence charged here being that the defendant, as a carrier, a United States mail carrier, has embezzled a letter intrusted to him, deposited to be carried by mail: In the first place, that he is such a carrier, that he is a post office mail carrier; second, that a letter was deposited in the United States post office established under the authority of the Postmaster-General of the United States; that the letter contained the evidence in this case — two one-dollar United States silver certificates and five postage stamps; that that letter came into the possession of the defendant, in his capacity as a carrier, to be delivered, and that he appropriated it fraudulently to his own use."

Those propositions are all to be established to your satisfaction. "It also appears, and the jury may infer, that the Roxbury branch of the Boston post office is a post office or a branch post office established under the authority of the Postmaster-General of the United States, from the fact that it existed during all these years; that it has existed for many years past as a branch of the Boston post office. That is sufficient evidence that it has been established under the authority of the Postmaster-General." And the said District Court further erred in submitting the said cause to the jury and instructing them as follows: "It also appears here, upon the testimony on the part of the Government, that a letter on the first day of

March was placed in this post office, and if the evidence in behalf of the Government is to be believed, that this letter addressed to Muldoon was put into the post office under the circumstances detailed; that is a sufficient evidence of that part of the indictment. Then, again, I understand it is also conceded that a letter such as is described by the Government, addressed to one Muldoon at 153 Zeigler Street, in Roxbury, was not only deposited in the United States mail, but came into the possession of the defendant, in his capacity as carrier, to be delivered." And the District Court further erred, after having instructed the jury in regard to the theory of the Government's case and the theory of the defence, in instructing them as follows: "I simply wish to repeat to you again that, in all this evidence, if you thought it was clearly proved beyond any substantial contradiction and substantial certainty that this letter was embezzled, taken and appropriated by the defendant, then you are to find him guilty."

(See pages 18, 19, 20, 21 of the Record.)

BRIEF OF ARGUMENT.

The first, second, third, fourth, fifth, eighth and ninth instructions upon pages 15 and 16 of the Record should have been given as requested by the defendant Goode.

First.

The Muldoon letter, so called, was not a letter. A letter is a written or printed message, a communication made by visible characters from one person to another at a distance.

The Muldoon letter was not a message nor a communication from one person to another. On the evidence there was no such man as John Muldoon. (See testimony of Boynton, pages 8 and 9 of Record, and that of McGrath, page 13 of the Record.)

There can be no message or communication to that which is not in existence.

United States *v.* Denicke, 35 Federal Reporter, 407.
Regina *v.* Gardner, 1 Car. & K. 628.

SECOND.

The Muldoon letter, so called, never became a letter or mail matter under the statute, because it never got into the mail in any of the usual ways provided by the post office authorities. (See testimony of McGrath, pages 11, 12 and 13 of the Record).

United States *v.* Rapp, 30 Federal Reporter, 818.

United States *v.* Denicke, *supra.*

Regina *v.* Rathbone, 1 Car. & M. 220.

The Muldoon letter at the time McGrath carried it into the post office was not mailable matter, and was not proper to be mailed. It had not been in the hands of any postmaster or in custody of mail, and it had no stamp upon it except the one that had been cancelled by Boynton. It could not be said to be a letter or mail matter, nor capable of becoming a letter or mail matter under this act. (See testimony of Boynton, pages 9 and 10).

A letter is not one until it is proper to be mailed in the usual course of mail.

United States *v.* Taylor, 37 Federal Reporter, 200.

THIRD.

The Muldoon letter was never deposited in the Roxbury post office nor in the mail for the Roxbury district deposited in the branch post office of the United States. (See testimony of McGrath, pages 10, 11 and 12 of the Record.)

It never went into the office so as to get into the custody of the postmaster.

The mere fact that it was carried into the post office building and put into a sorting case and in a sorter's box is not enough. It must get into the mail through the usual channels and by proper means. Had it been thrown on the floor it could not be said that it had been deposited in the mail, and the contention is that what was done amounted to no more.

Regina *v.* Rathbone, *supra.*

United States *v.* Rapp, *supra.*

A letter to be "deposited" must be confided to the care of the postal department for transmission.

Walster *v.* United States, 42 Federal Reporter, 891.

FOURTH.

The Muldoon letter, so called, was not one "intended to be conveyed by mail, nor one intended to be carried or delivered by the defendant, a mail carrier or letter carrier."

Boynton says that it was not such a letter. (See his testimony, page 9 of the Record.)

From Boynton's testimony (pages 7, 8, 9 and 10 of the Record) the Muldoon letter was one addressed to a fictitious person and to a fictitious address, that it could not be delivered, that he intended that it should not be delivered or carried to any one, or by any one. He intended that it should be stolen by defendant. That it was a letter that was never intrusted to any postal employee to be transmitted by the mail or mail agency of the United States to the person to whom it was addressed.

A letter intended to be conveyed by mail is one which is intrusted to or comes to the possession of some postal employee in the usual course of the mail, to be transmitted by means of mail or mail agencies of the United States to the person to whom it is addressed.

United States *v.* Matthews, 35 Federal Reporter, 890.

Even if the letter came into the mails in the usual course of business, if it can be shown that it is to be interrupted by post office inspectors, it is not intended to be transmitted by mail.

United States *v.* Matthews, *supra*.

A letter addressed to a person not in existence and to a place that does not exist, and one that does not get into the mail in the usual course, is not intended to be conveyed by mail nor carried by a letter carrier under Sects. 5467 and 5469 of the Revised Statutes.

United States *v.* Matthews, *supra*.

United States *v.* Denicke, *supra*.

United States *v.* Rapp, *supra*.

The English cases are in line with the cases above cited.

Regina *v.* Rathbone, *supra*.

Regina *v.* Gardner, *supra*.

FIFTH.

There are some cases that appear to hold a contrary doctrine to those above cited, which, on examination, do not.

United States *v.* Foye, 1 Curtis, 364.

In this case the letter was duly mailed and intended to be carried by post from Georgetown to Newburyport, Mass; and the letter was so carried.

United States *v.* Wight, 38 Federal Reporter, 106.

"All letters described in the indictment came into the post office in the usual course of business." They were all deposited in the street boxes with uncancelled stamps, and were intended to be carried to the post office and transmitted by mail.

United States *v.* Dorsey, 40 Federal Reporter, 752.

In this case the package was put into the mail in usual way and addressed so that it would have to be carried or conveyed by mail, and it was actually carried by mail.

United States *v.* Bethea, 44 Federal Reporter, 802.

Put in mail in usual way and transmitted.

United States *v.* Cottingham, 2 Blatchford, 470.

Letter in this case was duly mailed and transmitted.

SIXTH.

The Court should have left the question as to whether the Muldoon letter was intended to be conveyed by mail or carried by a letter carrier to the jury as a question of fact, if he refused the defendant's request for rulings and instructions.

Walster *v.* United States, *supra*.

Instead of so doing, he instructed the jury that the very facts

urged in opposition to the Government by the defendant were admitted by him. (See charge, page 17 of the Record.)

He stated that it was conceded that a letter as described by the Government was deposited in the United States mail; that it came into the possession of the defendant, in his capacity as a mail carrier, to be delivered. The Court went further and instructed the jury that all they had to find, as a matter of fact, was that this so-called letter had been taken, embezzled and appropriated by the defendant, and if those facts were found, then they were to find the defendant guilty. This instruction was erroneous, and tended to mislead the jury as to what they were to find, as matters of fact, before they could find the defendant guilty, and also tended to prejudice the minds of the jury against the defendant.

SEVENTH.

Sect. 5468 of the Revised Statutes of the United States, providing that the fact that any letter has been deposited in the post office shall be evidence that the letter was intended to be conveyed by mail, does not make such deposit conclusive evidence of that fact.

United States *v.* Matthews, *supra*.

EIGHTH.

The Court should have ruled as requested by the defendant in his seventh prayer. The defendant, if guilty of any crime under the evidence in this case, was guilty of simple larceny of Boynton's money and postage stamps, which could only be punished by the State courts. The District Court had no jurisdiction of that crime.

United States *v.* Baugh, 4 Hughes, 501.
United States *v.* Matthews, *supra*.
Regina *v.* Rathbone, *supra*.
Regina *v.* Gardner, *supra*.

NINTH.

The sixth prayer for instructions requested by the defendant should have been given by the Court.

It is a material allegation that the place from which the Muldoon letter or its contents were alleged to have been stolen was a branch

post office of the United States or an authorized depository for mail matter, established by authority of the Postmaster-General. The only evidence which in any way tended to establish the fact that it was such a post office is to be found in the testimony of Boynton, on pages 7 and 8 of the Transcript of Record. Upon the seventh page of the Record Boynton refers to it as "the Roxbury post office," in his narrative of what happened in regard to the Muldoon letter. On the eighth page of the Record Boynton also refers to it in like terms, and further states that "the Roxbury post office was abolished some time ago, and this station of the Boston post office was established in its stead." McGrath, on pages 10, 11 and 12, also refers to the place from which the letter was alleged to have been stolen as "a branch post office," and "the Roxbury post office." Weinstock, in his evidence found upon page 13, said that he was a "letter carrier at the branch post office." The defendant testified, as appears on page 15 of the Record, that he had been carrying letters from this branch post office for the past seven or eight years. This, together with the general narrative by each one of the witnesses, constituted all of the evidence tending to show that the place from which the letter was alleged to have been stolen was a post office, branch post office or depository for mail matter, established by the authority of the Postmaster-General.

There was no direct evidence that this post office, so called, was established by authority of the Postmaster-General. The best evidence of the establishment of this so-called post office was the record of the fact kept by the post office department, which record was never offered during the course of the trial. The defendant contends that there is not in this case any sufficient proof or any competent evidence of the fact that this so-called post office was at any time established by authority of the Postmaster-General of the United States.

GEORGE GOODE.

CHARLES W. BARTLETT,
ELBRIDGE R. ANDERSON,
of Counsel.

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THE UNITED STATES.

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SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

CHARLES W. BARTLETT,
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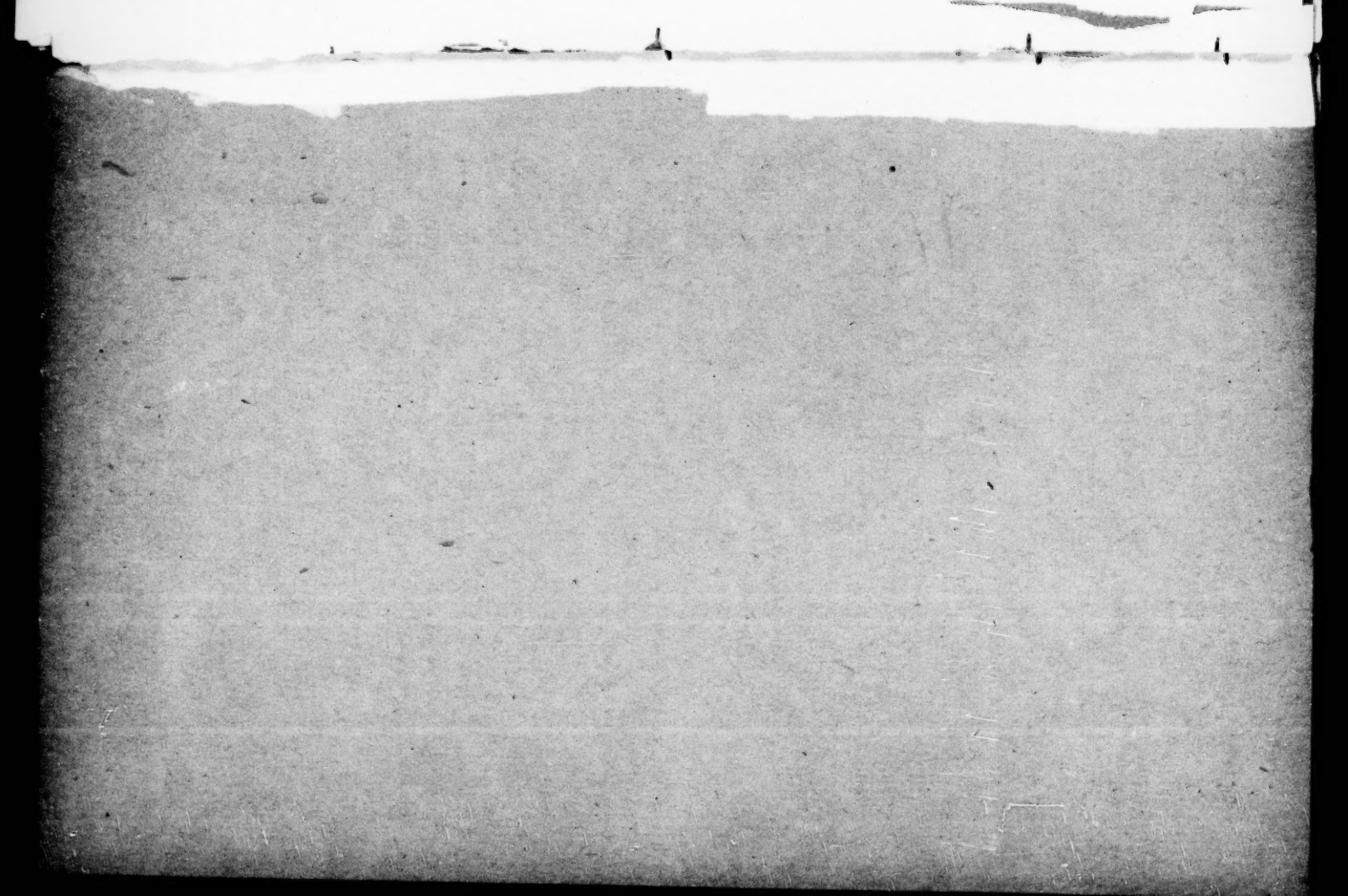

This brief is filed by permission of the Court in answer to brief filed on behalf of the United States.

POINT ONE.

Upon the fifth page of the brief of the United States, at the bottom of the said page, appears the proposition advanced by the Government, to wit: "A single exception including the refusal of a large number of separate distinct propositions, some of which were clearly incorrect, does not call upon the Court to consider special passages not separately excepted to"; and cites the case of Newport News Company *v.* Pace, 158 United States, 36. The case at bar differs from that case for the reason that, as is apparent upon the original brief of the plaintiff in error "the defendant excepted to each and every one of the refusals of the Court to rule and instruct the jury hereinbefore related," and as matter of fact that was so; and the plaintiff in error submits that the language used upon the seventeenth page of the record was sufficient to fully apprise this Court of the fact that that was the case. There it is stated that, to the refusal of the judge to give the rulings and instructions prayed for, the defendant duly and seasonably excepted and prays that his exceptions may be allowed. Had there been only one exception taken to the refusal of the judge, the word "Exceptions" in the last line of the paragraph referred to would have been the word "Exception."

Under the case of Bogk *v.* Gassart, 149 United States, 17–26, the rule is laid down "that a general exception taken to the refusal to give a series of instructions will not be considered, if any of the propositions be unsound." But it goes further and says that taken together the series of instructions must constitute a single request. Now in this case, as before contended, there were separate exceptions taken to the refusal of each one of the requests for ruling made by the defendant, and it is submitted that these requests did not constitute a single request, but were separate and distinct requests, some of which go to the root of the whole case, such as the second request for ruling, as a matter of law, upon the fifteenth page, and

some of which go only to principal portions of the case raised on separate and distinct sections of the statutes.

The plaintiff in error contends that the first, second, third, fourth, fifth, sixth and seventh requests were requests made at the end of the evidence in the case that the Court should rule as a matter of law that the Government had not made out its case in the particulars in said requests stated, the first request referring to a case to be made out under Sect. 5467, the second request being a request to direct a verdict upon all the evidence and upon all the counts, and the third and fourth being requests to rule as a matter of law upon certain vital things under Sect. 5467, and the fifth request to rule as a matter of law certain vital things entirely under Sect. 5469, and the sixth request for ruling as a matter of law that one principal matter essential under both sections of the statute had not been made out. It is contended under the seventh ruling, as a matter of law, that it might well be said by the judge presiding in the District Court that there had been sufficient evidence to go to the jury in regard to the embezzlement of the money contained in the Muldoon letter, so called, and that was a request to rule as a matter of law that if that money had been stolen by Goode the District Court had no jurisdiction.

Now it is contended upon this statement that the first eight requests do not come within the rule laid down in Bogk *v.* Gassart, as the separate and distinct matters do not constitute a single request. Under the record in this case the plaintiff in error contends that this Court should take cognizance of each and every one of the requests which were refused by the trial court and excepted to by him, and if any one of them which went to the root of the whole case should have been given, the judgment of the lower court should be reversed.

SECOND.

This case is one of great importance both to the Government and to the defendant.

The question has not been before this court before, and it is one upon which there has been various rulings by the Circuit and Dis-

trict Courts of the United States, and should be considered fully upon its merits for the future guidance of the various courts in which cases of this character are being continually tried.

There is another principle which the plaintiff in error invokes in his behalf, which is that wherever error is apparent on the record it is open to revision whether it be made to appear by a bill of exceptions or in any other manner.

Suydam *v.* Williamson *et al.*, 20 Howard, 427.

Where error is apparent on a record, no exception need be shown, and it need not have been presented by a bill of exceptions.

Moline Plow Co. *v.* Webb, 141 United States, 616.
Clinton *v.* Missouri Pacific Railway Co., 122 U. S. 469.
Potomac Railroad Company *v.* Trustees of Presbyterian Church, 91 United States, 127.

Anything appearing upon the record which would have been fatal on a motion in arrest of judgment is equally as fatal upon a writ of error, although objection was not taken below.

Slocum *v.* Pomeroy, 6 Cranch. 221.

It is contended by the plaintiff in error that if, upon the evidence contained in the bill of exceptions and in the record, it should appear to this Court that error had been committed by the judge of the District Court in refusing to rule as a matter of law that the Government had not made out its case against the defendant, and that no crime had been proved against him under either one of the sections of the statutes under which the indictment was drawn, then this Court would have the power to reverse the judgment of the court below.

The plaintiff in error does not waive any other points or rights that he may have from the fact that he has not discussed them in this supplemental brief.

BARTLETT & ANDERSON,
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Office Supreme Court U. S.
FILED.
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CASE No. 15903.

In the Supreme Court of the United States.

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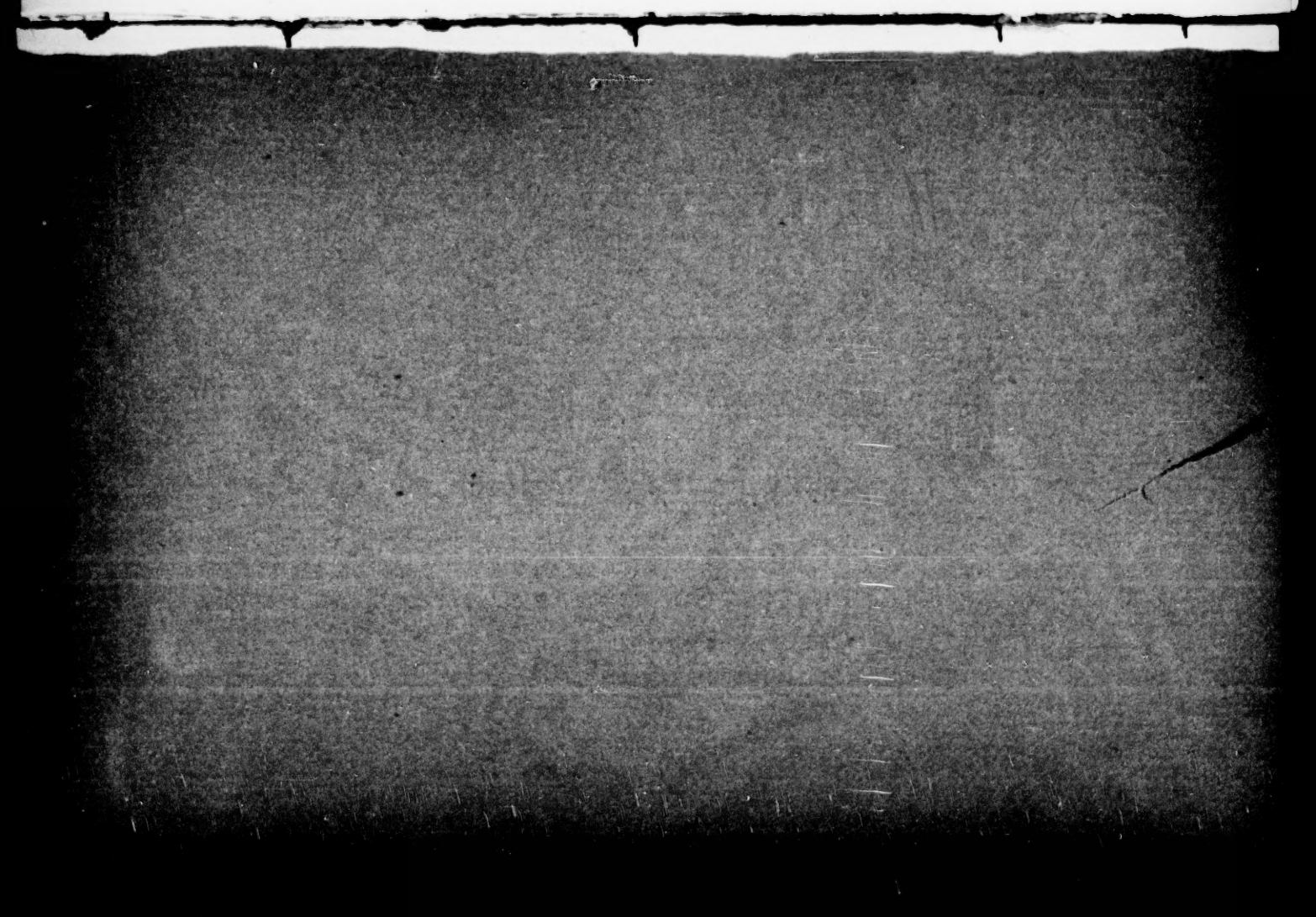
IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR DEFENDANT IN ERROR.



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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR DEFENDANT IN ERROR.

George Goode, a letter carrier, was indicted in the district court for the district of Massachusetts for embezzlement and theft from the mail on March 1, 1895. He was tried before Judge Nelson and a jury, and convicted April 8, 1895. The indictment is admitted to be correct in form (p. 6). It contains six counts charging violations of § 5467 and § 5469 of the Revised Statutes, which sections, so far as material, are as follows:

> § 5467. Any person employed in any department of the postal service who shall secrete, embezzle, or destroy any letter * * * intrusted to him, *or* which shall come into his possession, *and* which was

intended to be conveyed by mail *or* carried *or* delivered by any mail carrier, mail messenger, route agent, letter carrier, or other person employed in any department of the postal service, *or* forwarded through or delivered from any post-office or branch post-office established by authority of the Postmaster General, *and* which shall contain any * * * postage stamp * * *, or other pecuniary obligation or security of the Government * * *; any such person who shall steal or take any of the things aforesaid out of any letter * * * which shall have come into his possession *either* in the regular course of his official duties *or* in any other manner whatever, and provided the same shall not have been delivered to the party to whom it is directed, shall be punishable by imprisonment at hard labor for not less than one year nor more than five years.

§ 5469. Any person who shall steal the mail or steal or take from or out of any mail or post-office, branch post-office, or other authorized depository for mail matter, any letter or packet; any person who shall take the mail or any letter or packet therefrom, or from any post-office, branch post-office, or other authorized depository for mail matter, with or without the consent of the person having custody thereof, and open, embezzle, or destroy any such mail, letter, or package which shall contain any * * * postage stamp * * *, or other pecuniary obligation or security of the Government * * *; any person who shall by fraud or deception obtain from any person having custody thereof any such mail, letter, or packet containing any such article of value shall, although not employed by the postal service, be punishable by imprisonment at hard labor for not less than one year and not more than five years.

The former of these sections is accompanied by the following statutory rule of construction:

> § 5468. The fact that any letter, packet, bag, or mail of letters has been deposited in any post-office or branch post-office established by authority of the Postmaster General, or in any other authorized depository for mail matter, or in charge of any postmaster, assistant clerk, carrier, agent, or messenger employed in any department of the postal service, shall be evidence that the same was "intended to be conveyed by mail" within the meaning of the two preceding sections.

These sections are taken with some alteration from the "act to revise, consolidate, and amend the statutes relating to the Post-Office Department," of June 8, 1872, ch. 335, §§ 279–281 (17 Stat., 318, 319), which provisions were taken, with considerable changes, from the similar act of March 3, 1825, ch. 64, §§ 21, 22 (4 Stat., 107–109).

STATEMENT OF FACTS.

George Goode, the plaintiff in error, was a letter carrier, employed in the branch post-office at Roxbury. Roxbury had formerly been an independent post-office, but this was abolished some time ago, and a station of the Boston post-office established instead (p. 8). Goode having been suspected of stealing from the mails, a decoy letter was put into his hands for the purpose of testing his honesty. The letter was addressed to John Muldoon, esq., 153 Ziegler street, Boston, Mass. Part of Ziegler street was contained in one of Goode's routes, but his

route ceased at Nos. 36 and 51. The address on the letter was blurred, and looked as if it might have been 53 instead of 153 (p. 13).

There was no such place as 153 Ziegler street and no such person as John Muldoon. The letter was prepared by Thomas J. Boynton, the post-office inspector in charge of Boston (p. 7). It was postmarked West Cheshire, Conn. Boynton, in fact, took an envelope containing that postmark, filled in the date, which was missing on the postmark, with type which he had in his office for that purpose, and canceled the stamp with a canceler such as that used ordinarily in the smaller post-offices (pp. 9, 10). He inclosed in the letter two $1 silver certificates and five 2-cent postage stamps. These postage stamps he marked by means of pin holes (pp. 7, 9, 10). Boynton gave the letter so prepared to John W. McGrath, who was assistant superintendent of the mailing division in the main post-office in Boston, but was stationed temporarily, by deputization of the Boston postmaster, at this Roxbury post-office (p. 10).

Mr. McGrath, when the letter carriers were out, called as a witness Major Killian, the superintendent and person having charge of the branch post-office (p. 9), and in Killian's presence put the letter into Carrier Goode's box. Goode returned from his route and took up all the letters in the box (p. 11). It was his duty either to put this Ziegler-street letter into the box of the carrier whose route included the higher numbers on Ziegler street (p. 14), or to put it into the box called the "list box." This "list box" was kept for the reception of any letter known

as a "beat" or a "nixie;" that is, a letter addressed to a person not to be found in the district (p. 12). On Goode's return from his route, the letter not being found in either of these boxes or elsewhere, Goode was searched and the five marked postage stamps were found upon his person (p. 8). It was shown that, while absent on his route, he had had opportunity for disposing of the letter and the silver certificates therein contained (p. 15).

EXCEPTIONS.

All of the exceptions to the evidence relate to refusals of instructions requested.

There were nine of these requests to instruct, all of which were refused. The instructions actually given to the jury were "full and appropriate" (p. 19). Part of these are set forth in the bill of exceptions; and to the portions so set forth no exception was taken.

The single exception contained in the case is as follows (p. 17):

> To the refusal of the judge to give the rulings and instructions prayed for the defendant duly and seasonably excepted, and prays that his exceptions may be allowed.

Before taking up the requests *seriatim*, it is submitted that the record contains no ground for reversal, whether or not any single request may have stated the law correctly, since—

(1) A single exception including the refusal of a large number of separate and distinct propositions, some of which were clearly incorrect, does not call upon the court

to consider special passages not separately excepted to. (*Newport News, etc., Company* v. *Pace*, 158 U. S., 36, and cas. cit.)

(2) As it appears that the instructions of the court were full and appropriate, and these instructions are not fully contained in the record, it is to be presumed that defendant's requests, so far as they stated the law correctly, were refused because they were regarded as unnecessary. (See *Anthony* v. *Louisville Railroad Co.*, 132 U. S., 172; *Tucker* v. *United States*, 151 U. S., 164, 170.) "That the law was fully given by the court to the jury we are bound to presume in the absence from the record of the entire charge, and that it was correctly stated from the fact that plaintiffs in error took no exceptions to it;" so that the instructions "may have been refused because already fully given in the general charge." (*Reagan* v. *Aiken*, 138 U. S., 109, 113, 114.)

We now proceed to take up the exceptions separately.

I. This request, among other things, asks "that a verdict must be returned for the defendant" (p. 15). It raises the question whether, upon all the evidence in the case, the defendant was entitled as matter of law to an acquittal. It raises no other question if defendant was not thus entitled.

If any one of the counts of the indictment (all of which are conceded to be sufficient in point of form) was sustained by proof, the jury were entitled to find a verdict against the defendant upon that count; and a general verdict against the defendant is to be sustained on that

count, even in the absence of any competent evidence upon any of the others. (*Evans* v. *United States*, 153 U. S., 584, 595.)

It should be sufficient here to refer to the fifth count of the indictment (pp. 4, 5), which is drawn under the first clause of § 5469, and charges defendant simply with the offense of stealing a letter of the value of $2.10, the property of Thomas J. Boynton, deposited in the Roxbury branch post-office.

It may be suggested that $2.10 was the value not of the letter, but of the contents thereof. This technical objection, however, is not one tenable, at least after verdict, under § 1025 of the Revised Statutes and the numerous recent authorities in this court construing and applying that section; nor is it necessary to prove the value alleged in the indictment. (1 Bishop's Criminal Procedure, § 488, *b*.)

The letter is one which the letter carrier should never have taken out of the post-office at all, but should have transferred at once in sorting his mail to some other box in the office; or, if he took it with him inadvertently upon his route, he was bound on returning to dispose of it as aforesaid. He therefore is properly chargeable with having stolen a letter out of a branch post-office. The letter was lawfully in that office, having been placed there by a high official in the presence and with the authority of the superintendent having charge of the office.

It is submitted that under the broad language of the present statute it is entirely immaterial that the letter did not reach the carrier's desk through the ordinary medium

of the public letter box. A carrier can be no less chargeable with theft because the letter which he steals has reached his hands in an unusual manner, so long as it is really a letter and really within the branch post-office. The letter was there *de facto*, at any rate, if not *de jure* (see *Wright* v. *United States*, 158 U. S., 232, 238, 239), and the thief is in no position to claim irregularity. (See *Ingraham* v. *United States*, 155 U. S., 434, 437; *Cochran* v. *United States*, 157 U. S., 286, 290.) It is submitted, however, that the person in charge of a post-office may mail a letter behind a partition as well as through the public letter box, and that the clerks and carriers can not be heard to question in a civil or criminal suit the action of their superior officer in this regard.

It may be suggested that the clause referred to in § 5469 is not sufficiently connected with the final words of that section, which read, "be punishable by imprisonment at hard labor," etc. A similar technical construction was given to § 5467 by Judge Pardee in *United States* v. *Long* (10 Fed. Rep., 879); see also *United States* v. *Greuer* (35 Fed. Rep., 59), Simonton, J. This construction would make absolutely nugatory every word in § 5469 down to the last semicolon in that section. It would violate the very plain and clear intent of that section, which is that the words "any person" at each place where they appear in the section are to be read with the words "shall * * * be punishable by imprisonment," etc., in its final clause.

If not so connected, nearly all of that section is without any verb to accompany its principal noun. This precise

point came up for determination in *United States* v. *Lacher* (134 U. S., 624), and the court unanimously certified its opinion that all the persons described in that section were liable to the punishment therein provided, Chief Justice Fuller saying that "although the apparent grammatical construction might be otherwise, the true meaning, if clearly ascertained, ought to prevail" (p. 626); and saying (p. 628): "But though penal laws are to be construed strictly, yet the intention of the legislature must govern in the construction of penal as well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature."

It may be claimed that the letter in question was not within the protection of the Federal statutes because it was a decoy; the person and place to which it is addressed were both fictitious. The principle that as a general rule a criminal can not escape on the ground that he was decoyed was established by a decision of eleven judges in 1801 in *The King* v. *Eggington* (2 Bos. & P., 508), earlier rulings to the same effect being cited by counsel at page 513. It is confirmed by this court, citing many recent cases, in *Grimm* v. *United States* (156 U. S., 604), in which case the letters were sent to a fictitious person at an address not fictitious. In *United States* v. *Foye* (1 Curt., 364), *United States* v. *Wight* (38 Fed. Rep., 106), and *United States* v. *Bethea* (44 Fed. Rep., 802) not only were the letters addressed to persons not in existence, but it was not intended that they should be delivered to anybody. The Wight case came up on motion in arrest of judgment before Mr. Justice Brown and Mr.

Justice Jackson. Mr. Justice Brown in his opinion states forcibly what the practical effects of a contrary ruling would be:

> Defendant contends that under all the circumstances the conviction can not be sustained, because the letters were not intended to be conveyed by mail or carried or delivered by any mail carrier within the meaning of section 5467. If counsel intend by this to assert that a decoy or test letter can not be the subject of embezzlement or its contents of larceny under this section, I can only say that nine out of ten convictions of post-office employees in this district for the past thirty years have been secured by means of decoys, that a large majority of the cases reported in the books were based upon decoys, and that dozens of men throughout the country are undergoing punishment for interference with this class of correspondence.

It has been held in cases presently to be discussed that a decoy letter under circumstances like the present can not become the basis of a prosecution under § 5467 by reason of the special requirements of that section. This is a question not vital to the exception now under consideration, which is sufficiently answered by reference to § 5469. It will be noticed that the first clause of § 5469 includes the case of a post-office employee, even though he might be subject to indictment also under § 5467. It was so held by Mr. Justice Nelson and Judge Betts in a case arising under the corresponding provisions of the act of 1825. (*United States* v. *Marselis*, 2 Blatch., 108.)

II. The second request also contains substantially a request to direct an acquittal, and therefore requires no further consideration.

III. The third request is as follows:

> That upon all the evidence in this case, the Muldoon letter was not "intended to be conveyed by mail" within the meaning of section 5467 of the Revised Statutes of the United States.

This request, if separately excepted to, would have raised more difficult questions. These questions, however, would not have been essential to a correct disposition of the case. It is not necessary for a conviction under § 5467 that the letter in question should be intended to be conveyed by mail; nor is the indictment limited to this branch of the statute. The jury could not have been at all interested in the question whether the letter in question came within the clause "intended to be conveyed by mail" or the clause "intended to be carried or delivered by any letter carrier." They cared not under which clause of the statute his theft might be found properly classifiable. They were interested only in ascertaining whether defendant stole the letter. It is therefore submitted that this request, like the one next following, is one whose denial could not possibly have prejudiced the prisoner; or at least that if either request were properly denied, the error in denying the other request was unprejudicial. If the denial was unprejudicial, it is needless to cite authority to the point that an exception thereto is unavailable.

There was, however, evidence before the jury that the letter was "intended to be conveyed by mail" within the meaning of the section under consideration. This evidence was afforded by the testimony that the letter

was put in charge of the carrier, for § 5468 makes the "fact that any letter * * * has been deposited in any post-office or branch post-office * * * *or* in any other authorized depository for mail matter, *or* in charge of any * * * carrier," evidence to this purpose.

It has been held in certain cases that a letter can not be "intended to be conveyed by mail" when the duty of the employee with whom it is deposited is simply to transfer it to a neighboring desk, which will necessarily be the end of its circuit. (*United States* v. *Rapp*, 30 Fed. Rep., 818, Newman, J.; *United States* v. *Deneke*, 35 Fed. Rep., 407, Speer, J.; *United States* v. *Matthews*, id., 890, Mr. Justice Harlan.) It is respectfully suggested that an unnecessarily narrow interpretation is given to the words "by mail" in these decisions. The letters are actually to be conveyed from one place to another in the course of his duty by the post-office employee. Whether the conveyance be for the space of 3 feet or 3 miles, is it not in the course of mail and therefore "by mail?"

If, however, as above argued, it is immaterial whether this third request stated correct propositions, provided the clause referred to in the fourth request includes the case of this defendant, it is unnecessary to pursue this branch of the discussion further.

IV. The fourth request is as follows:

> That upon all the evidence in the case the Muldoon letter was not "intended to be carried or delivered by any letter carrier" of the United States within the meaning of section 5467.

It will be noticed that the words here under consideration were incorporated in the statute by the act of 1872 (17 Stat., 318), not being found in the corresponding statute of 1825 (4 Stat., 107). Evidently the words "intended to be conveyed by mail" had been found too narrow in meaning, and Congress intended to make the scope of this penal enactment as broad as possible. The words "carried or delivered by any * * * letter carrier" mean something different from or wider than the words "conveyed by mail." If, then, the act of the letter carrier in carrying the letter over to the "list box" is not a conveyance "by mail," it still is an act of carrying performed by the carrier. It is an act which he performs by reason of his duty under the post-office laws and regulations. It comes strictly within the letter of the statute, and if he steals the letter instead of carrying it he violates the spirit of the statute and merits punishment as fully as if the letter stolen were one intended to be delivered to some resident along his route. Not only is the case within the letter and spirit of the statute, but to rule it out of the statute very much interferes with the administration of criminal law and operates to encourage felony by mitigating its possible penalty, for a decoy letter addressed in this way is the most efficient means of ascertaining which of several employees is the thief.

In the Matthews case the indictment seems not to have been based upon this clause of the statute, so that the reference thereto by Mr. Justice Harlan in his opinion seems not to have been necessary to the disposition of the case. It is respectfully submitted that excluding

from the operation of the statute a state of facts like that shown in the case at bar substantially nullifies the amendment of 1872.

The English cases sometimes cited arise under a statute whose language is quite different. Its provisions are set forth in *Regina* v. *Gardner*, 1 C. & K., 628.

V. This request seems to require no further discussion than has already been given to the first request.

VI. This request challenges the competency of the evidence that the Roxbury station of the Boston post-office is a post-office or branch post-office or any authorized depository for mail matter, and claims that a verdict should be rendered for the defendant on this ground. The status of the Roxbury branch office was explained by Mr. Boynton in his testimony (p. 8). If it is necessary that the facts should be shown by record evidence, an objection on the ground of incompetency should have then been made. As it was not made, the objection was waived. (1 Thompson on Trials, § 700.)

This court, however, which can take judicial notice of an official appointed under State laws (*Shields* v. *Coleman*, 157 U. S., 168, 181), can certainly take judicial notice of a United States branch post-office in the city in which its sessions are held; nor is it necessary that the branch post-office shall have been established *de jure* (see *Wright* v. *United States*, 158 U. S., 232, 238, 239), which is in fact presumed (see *Ingraham* v. *United States*, 155 U. S., 434, 438); nor is there any requirement that such facts should be proved by matter of record.

VII, VIII, IX. These requests seem to require no further consideration.

It is respectfully submitted that the judgment should be affirmed.

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